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ABSTRACT

Traditional sex discrimination on college and university campuses is coming to a halt. Recent Federal affirmative action requirements call for the development of procedures to promote and ensure the equitable treatment of faculty and staff women in employment and promotion to provide them with fair representation in all aspects of campus activities. More than 80% of the nation's colleges and universities are affected by the Federal affirmative action program, and are threatened with loss of Federal funds for failure to comply. This report examines the current law governing affirmative action programs and sex discrimination on campus, and describes the approaches universities and colleges have taken to comply with the law. (H)

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Affirmative Action: Women's Rights on Campus

Carol Herrnstadt Shulman

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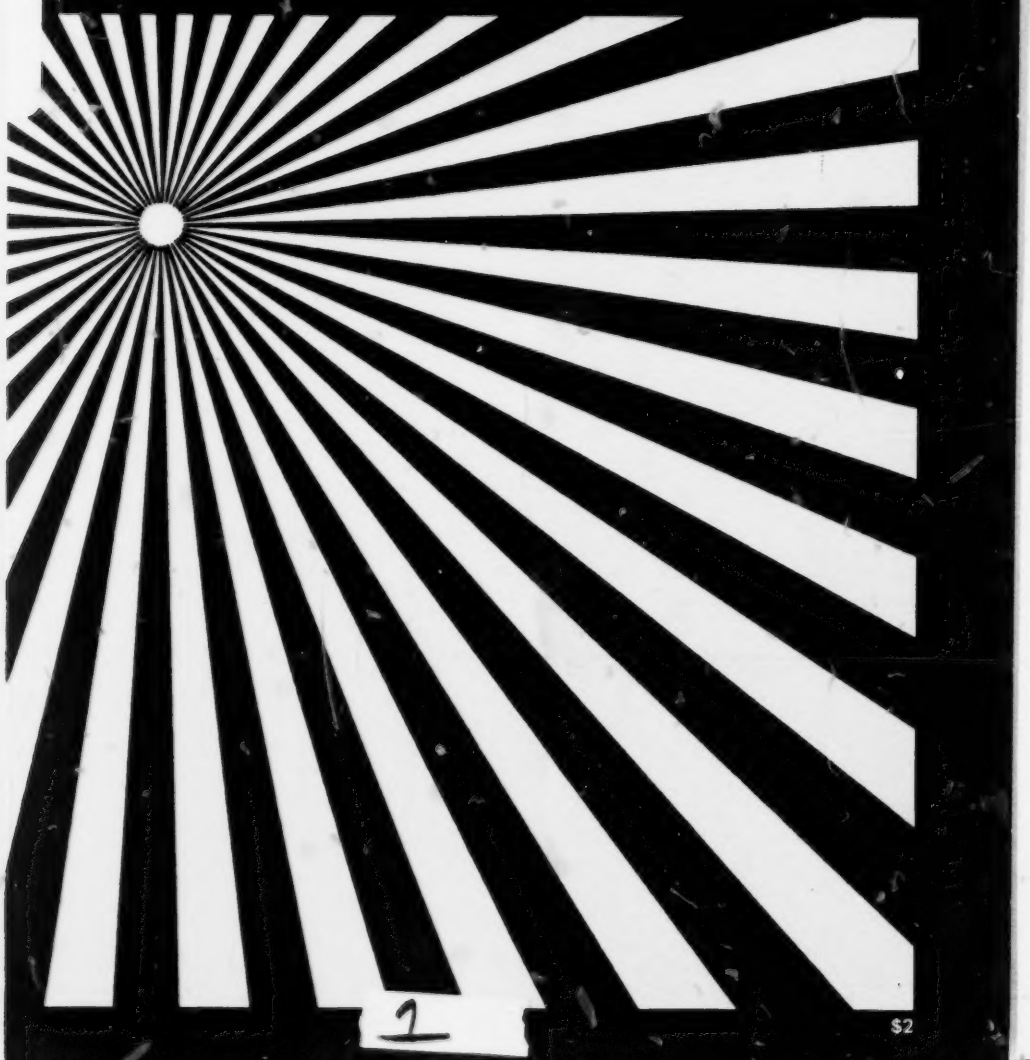

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Affirmative Action: Women's Rights on Campus

Carol Herrnstadt Shulman

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OFFICE OF EDUCATION
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Foreword

Those universities that are federal contractors must promote the increased employment and more equitable treatment of administrative and faculty women. This responsibility, known as an "affirmative action" requirement, and the demands of women's organizations, have created a need for new employment procedures for all university administrative and faculty positions. The present report discusses the legal requirements, and the current controversy surrounding the entire affirmative action issue.

This report was prepared by Carol Herrnstadt Shulman, Research Associate at the Clearinghouse. The author wishes to thank Bernice Sandler, Executive Associate, Association of American Colleges, and Sheldon Elliot Steinbach, Staff Associate, American Council on Education, for reviewing the manuscript and for their advice during its preparation.

This is the sixth in a new series of Clearinghouse reports to be published by the American Association for Higher Education. (AAHE). In addition to the report series, the Clearinghouse also prepares brief reviews on topical problems in higher education that are distributed by AAHE as *Research Currents*.

Carl J. Lange, *Director*
ERIC Clearinghouse on Higher Education
September 1972

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1. Introduction

"Affirmative action for women" has become a priority issue in higher education. More than 80% of the nation's colleges and universities are affected by Federal affirmative action requirements (34b) and threatened with the loss of needed Federal contracts for failure to comply. "Affirmative action" is a legal doctrine that requires a university, following Federal guidelines, to develop and codify procedures that promote and ensure the equitable treatment of faculty and staff women in employment and promotion, and provide them with fair representation in all aspects of campus activities.

Controversy surrounds affirmative action programs on campus because their implementation will create radical changes in the methods administrators and faculties use to recruit, hire, and promote professional staff. The new methods are time-consuming and, some educators fear, detrimental to maintaining the quality of an institution. Women find, however, that universities are moving too slowly in developing effective procedures for equitable treatment.

Despite the attention that affirmative action programs have received, there is widespread confusion over the legal requirements involved. Moreover, little is known about the methods universities are using to comply with these requirements. This report will examine the current law governing affirmative action programs and sex discrimination on campus, and will describe the approaches universities have taken to comply with the law.

2. The Legal Thrust Behind Affirmative Action

Executive Order 11375

Professional women employees have used Executive Order 11375 (14) to deal with the problems of sex discrimination on campus (30).[1] In January 1970, the Women's Equity Action League filed a class action complaint with the U.S. Department of Labor against all colleges and universities covered under the Executive Order, an action that eventually brought Federal investigators onto college compuses (30). This Order is also the impetus behind the current affirmative action activities on campus, and was the only legal remedy available to women until March 1972, when Title VII of the Civil Rights Act of 1964 was amended by Congress.

Women discovered the value of the Executive Order belatedly: the Order was issued on October 13, 1967, although its effective date was 1 year later. The Order bars Federal contractors from discriminating on the basis of sex and is an amendment to Executive Order 11246 (14), which prohibits discrimination on the basis of race, religion, color, or national origin. This prohibition and the following requirement are included in every Federal contract:

> The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during

[1] For discussions of discrimination against women in higher education see, Astin, Helen S. and Alan E. Bayer, "Sex Discrimination in Academe," *Educational Record 53*, Spring 1972; and Robinson, Lora H., *The Status of Academic Women*. Washington, D.C.: ERIC Clearinghouse on Higher Education, April 1971. ED 048 523; MF-$0.65, HC-$3.29.

> employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment. . .; rates of pay or other forms of compensation. . . . (14)

Administering the Executive Order

The U.S. Department of Labor has overall responsibility for administering the Order, but has delegated enforcement powers and responsibility to the Department of Health, Education, and Welfare for all higher education institutions. A recently established Higher Education Division in HEW's Office for Civil Rights deals with affirmative action enforcement, but the Division's administration of the Order must conform to the Department of Labor's regulations implementing it. It is important to note that an entire university is subject to the requirements of the Executive Order, although only one department in the university may hold a contract covered by applicable regulations.[2] Under Labor Department regulations, all institutions having a Federal contract of $10,000 or more must agree to abide by the provisions of the Executive Order. In addition, all institutions having 50 employees and $50,000 or more in Federal contracts are subject to the affirmative action requirements established by the Department of Labor to implement the Executive Order. Private institutions must have written affirmative action plans on file. Public institutions covered by these criteria are exempt from having a written program on file, but they must satisfy the same affirmative action requirements imposed on the private colleges. HEW believes that public colleges can achieve this standard by developing programs like those required of private institutions (34c).

The distinction between private and public institutions has been criticized as "arbitrary," having no basis in the exemptions cited in the Order. Further, this difference "puts the government in the somewhat ludicrous position of requiring stronger affirmative action and standards from the private sector than the public sector" (29). At this time, the Department of Labor is reviewing the exemption for having a written plan.

Generally, institutions can readily ascertain if they have contracts that bring them within the scope of the Order. Some confusion, however, has arisen over the definition of a "contract." The Department of Labor's policy is:

[2] 40C.F.R. 60.1

> A government contract, even if nominally entitled "grant" but involving a benefit to the Federal government would be subject to the Executive Order. . . . Thus, for example, if the Federal government contracts with a college or university for the latter to do research for the Government and such contract involves a sum of more than $10,000, it would be subject to Executive Order 11246, as amended (43).

In contrast, the Higher Education Division reports it has a narrower interpretation of the Order's scope: it considers that an institution is covered by the Executive Order where the Division "can establish a contract."[3] This difference between the Department of Labor and HEW can become significant when HEW decides to impose sanctions on a university for noncompliance. Without due process proceedings, HEW can delay or "freeze" the award of new contracts of $1 million or more. But at Columbia University, Federal research "grants" were excluded from a general penalty freeze on new Federal contract awards. At least one HEW Regional Office has included a freeze on grants together with its freeze on contracts (45).

A university is subject to a contract compliance review when an individual complaint, or a complaint of a pattern of discrimination, is filed with the Secretary of HEW (pattern complaints charge that pervasive discrimination exists in an institution). HEW must also conduct a compliance review before any Federal agency or department awards an institution a contract of $1 million or more. In July 1972, the Office for Civil Rights (OCR) and the Equal Employment Opportunity Commission (EEOC) agreed that OCR will refer individual complaints of employment discrimination to EEOC for investigation if the complaint is covered by EEOC's recently expanded jurisdiction.[4] Complainants will be notified that their cases have been transferred to EEOC (38).

The Compliance Review

Bernice Sandler and Sheldon Steinbach (34c) describe the procedures and the problems that develop in the course of a compliance review. As the first step, the HEW Regional Office notifies

[3]Telephone conversation with Robert Smith, Acting Director, Higher Education Division, July 13, 1972.

[4]See page 9 for a discussion of the Equal Employment Opportunity Commission's powers in higher education.

an institution in writing that it will be subject to a review. Universities and women's groups both criticize this procedure as currently implemented. The universities contend they need more than the 3- or 4-weeks' notice generally allotted to prepare an adequate review; women's organizations and individual complainants protest that usually they are not notified of the review, and therefore are deprived of the opportunity to furnish HEW with relevant information. Since the Regional Offices schedule their reviews on a quarterly basis (34c), it appears that both the universities and concerned women could receive adequate notice of an impending investigation if appropriate steps were taken.

Also at issue is the question of who bears the burden of proof when HEW investigates a complaint. Generally, the woman or group filing a complaint does not have to provide an extensive amount of information to compel HEW to begin a complete investigation (30). Administrators therefore feel that at the beginning and during the course of the complaint process they bear an unfair burden of proof. They contend that:

> . . .the attitude demonstrated by HEW is that all colleges and universities are guilty of discrimination against women . . . .

But HEW seems to argue that:

> Once the individual [or a pattern of discrimination complaint] has produced sufficient evidence to support the legitimacy of his complaint, the burden of going forward shifts to the institution, not as a penalty, but because it possesses the information necessary to substantiate or refute the charges that have been brought. (41)

HEW also denies there is a presumption of guilt or innocence when a review is initiated (34c).

HEW and the universities have experienced their greatest conflict over the on-campus investigation process that is at the heart of a compliance review.[5] The universities question HEW's right to have full access to personnel records (41). HEW contends that it derives this authority from the Executive Order itself, which requires:

---

[5]Much of this debate arises from the Department of Labor's Revised Order No. 4. Revised Order No. 4 describes the evidence an employer must have and the actions he must take to satisfy the requirements for affirmative action as described in Executive Order 11246. Revised Order No. 4 will be discussed in detail below.

> The contractor will furnish all information and reports required by Executive Order No. 11246 . . . and by the rules, regulations, and orders of the Secretary of Labor . . . and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders (14).

The universities fear that HEW's access to files will place in jeopardy the current process of candid evaluation of faculty that is necessary for the purposes of retention and promotion (33, 34c). Those who make faculty recommendations may fear that their evaluations will not be kept confidential. Administrators also argue that an individual's right to privacy will be violated by disclosure unless there is a "persuasive showing of cause" (34c). However, HEW employees are legally barred from disclosing file information, and women's groups point out that the presence or absence of discrimination cannot be determined without HEW's having access to employment records (34c).

The University of California at Berkeley has worked out a procedure with HEW's Office for Civil Rights (OCR) for dealing with this disclosure problem that may be useful to other institutions. The University recognizes OCR's right of access to its files but reserves the right to ensure the personal confidentiality of files unless the law requires otherwise. In turning over records to HEW, the University may delete material that would identify the individuals making evaluations or recommendations. The names of Berkeley campus "deans, department heads, or other supervisors" will not be deleted. When deletions occur, names will be replaced by race, sex, and title. If OCR determines that a deleted name must be provided, the University may "seek a determination in any appropriate forum" concerning the need to supply the name (5).

After an investigation is completed, the HEW Regional Office presents a "letter of findings" to the head of the institution during an "exit conference" (34c). The institution has 30 days after the date of the exit conference to develop a written plan to correct any "deficiencies" reported in the letter of findings. The university plan must be approved by the HEW Regional OCR Office and by national OCR headquarters in Washington. The time between the exit conference and HEW's approval of a plan may take over a year (34c), a situation that creates considerable doubt as to what actions an institution should take during the waiting period.

The review process, and any subsequent negotiations and affirmative action plans that emerge from it, are preliminary steps in

determining a Federal contractor's continued eligibility to receive federal money. If a university and HEW fail to reach agreement on nondiscriminatory policies and practices during this process or at its end, HEW may:

> Cancel, terminate, suspend. . .any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with the nondiscrimination provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the contracting agency (14).

Federal regulations provide for due process proceedings before an institution can lose its existing contracts, but there are no such safeguards for new contracts of $1 million or more. As a result, HEW has delayed the awarding of new contracts at more than 40 institutions for short periods of time (30). Columbia University, for example, experienced a "freeze" on new contracts from November 3, 1971 through February 29, 1972, when HEW accepted an interim affirmative action plan. The University's attorney speculates that the institution may have also lost potential new contracts because agencies may not have considered Columbia while it was under the freeze (45). Agencies may also be wary of awarding a new contract to a contractor who has used "dilatory tactics" in achieving compliance under current contracts (22). Attorneys are debating this issue:

> HEW claims that if a contract has not been officially awarded, the fact that it is "held up" does not constitute a deprivation of property without due process of law, which would require the granting of a hearing. Institutions argue that the foregoing constitutes a distinction without a difference and that inasmuch as the contract has been granted (though not completely cleared), any interference with their rights under the contract should be preceded by notice and a hearing (34c).

The Admendments to Title VII

Since the Equal Employment Opportunity Act of 1972 was signed into law on March 24, 1972, women have had a new legal remedy to combat sex discrimination on campus (13). This Act amends Title VII of the Civil Rights Act of 1964 to include all educational institutions within its scope (whether public or

private), and gives new enforcement powers to the Equal Employment Opportunity Commission (EEOC) created by the 1964 Act. Title VII prohibits discrimination on the basis of race, color, religion, sex, or national origin in all aspects of recruitment, hiring, employment, and promotion practices. The new act thus encourages further activity against sex discrimination since ". . . whatever doubt previously existed, Title VII establishes a national policy against sex bias in employment which is both absolute and binding on the university" (12).

Under Title VII, a complaint may be filed by EEOC itself, an organization, or an individual complainant. The law governing these complaints provides specific time periods that must be followed: The employer must be notified that a charge has been filed against him within 10 days after the Commission receives the complaint. The employer is also informed of the charges against him. A complaint must be filed 180 days after the date of the alleged discrimination.[6]

If no basis for the complaint is found, the Commission is required to dismiss the case and "promptly" inform the parties concerned of its action. If the Commission finds "reasonable cause" for the complaint, informal methods of conciliation are first used to remedy the situation. When a complaint cannot be satisfactorily resolved by informal conciliation within a 30-day period, the EEOC is authorized to bring a civil suit against the employer.

If informal conciliation does not succeed in cases involving state and local government employees, the EEOC turns the complaint over to the U.S. Attorney General for prosecution. If a court finds for the employee, it can order the employer, commercial or governmental, to:

> . . . [take] such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay . . ., or any other equitable relief as the court deems appropriate (13).

The affirmative action concept in both Title VII and E.O. 11246, as amended, suggests that, despite the 180-day statute of

[6]The regulations implementing Executive Order 11246, as amended, also have a 180-day statute of limitations for filing a complaint, but there is the provision that this time period may be "extended by the agency or the Director [Office of Federal Contract Compliance] upon good cause shown" (60.41-1.21).

limitations, these laws may be used to overcome longstanding patterns of discrimination. Affirmative action requires more than passive nondiscrimination: it demands that an employer take steps to ensure that the effects of past discrimination, whether intentional or not, are remedied. It also requires that practices currently used are designed to ensure equitable treatment and guard against the future reoccurrence of discriminatory patterns.

Higher Education Act of 1972

The Higher Education Act of 1972, effective June 23, 1972, also provides women in higher education with two additional avenues of redress. First, the Act prohibits discrimination on the basis of sex in any education program or activity receiving federal aid. Federal departments and agencies granting aid must develop regulations to implement this ban, subject to the President's approval. An agency may terminate or refuse to grant aid when a recipient is found not to be in compliance, after due process proceedings.

Second, the 1972 Act also extends the Equal Pay Act of 1963 to include executive, administrative, and professional employees (36). Under the Equal Pay Act:

> Women and men performing work in the same establishment under similar conditions must receive the same pay if their jobs require equal skill, effort and responsibility. . . . Jobs which are compared under the Equal Pay Act have to be *substantially similar* (36).

The Wage and Hour Division of the Department of Labor's Employment Standards Administration administers the Equal Pay Act and can review employment practices whether or not a complaint has been filed. When a violation has been found, the employer is asked to raise salaries and award back pay, usually up to 2 years, to the underpaid employees. The case will go to court if the employer does not comply with the Labor Department's findings (36).

3. Revised Order No. 4 – Issues Raised

The Department of Labor's "Revised Order No. 4" (41 CFR 60) implements Executive Order No. 11246, as amended (27).[7] Revised Order No. 4, issued on December 4, 1971, and effective 120 days later, details the information all Federal contractors with 50 or more employees and contracts totaling $50,000 or more must include in their written affirmative action programs.[8] Public institutions, which are exempt from having written plans on file, find the Revised Order the most important indication of the criteria they must satisfy to ensure affirmative action compliance. The Revised Order places significantly greater emphasis on sex discrimination than did the original order.[9] A contractor who does not have an acceptable affirmative action plan is not in compliance with Executive Order 11246, as amended (60-2.2).

College and university personnel who develop and administer affirmative action programs do not question the policy of equitable treatment for women and minorities. Instead, they are concerned about the problems of translating Revised Order No. 4's

[7]Numerical citations in the discussion of Revised Order No. 4 refer to sections of the Order.

[8]In July 1972, the Office for Civil Rights issued draft guidelines that, in their final form, would explain to those concerned with affirmative action implementation how OCR will apply Executive Order 11246, as amended, and Revised Order No. 4's requirements. The draft guidelines were sent to members of the academic community for comment by August 15. The official guidelines are expected in the fall.

[9]Revised Order No. 4, for the first time, calls for a separate utilization analysis and goals and timetables for women. Separate goals are also required for minorities, and the contractor may have to provide separate goals for minority women (60-2.12k).

requirements into practical policies and procedures that can be followed on campus. The Order defines an affirmative action program as:

> a set of specific and result-oriented procedures to which a contractor commits himself to apply every good faith effort (60-2.10).

Critics of the Revised Order's requirements fear that the implementation of these procedures will damage the quality of a university. University administrators and women's groups on campus therefore face the double problem of developing satisfactory procedures to ensure quality, and persuading those involved to follow these procedures.

Goals and Timetables

Controversy over affirmative action focuses on the "goals and timetables" requirements in the Revised Order. All aspects of an affirmative action program are directed to meeting these goals and timetables, which must be included in the program (60-2.12.i). The Order defines goals:

> Goals may not be rigid and inflexible quotas which must be met, but must be targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work (60-2.12e).

The distinction made here between goals and quotas is of particular importance to the academic community, which prides itself on choosing its personnel on the basis of achievement rather than on the basis of filling vacant job slots. In response to educators' fears that goals are, in effect, quotas, J. Stanley Pottinger, Director of HEW's Office for Civil Rights, provides this explanation of "goals" versus "quotas":

> Goals are not quotas, and the difference is not a matter of semantics. Each word has a specific and different meaning in the field of employment compliance.
>
> Quotas, on the one hand, are numerical levels of employment that must be met if the employer is not to be found in violation of the law. . . . Their effect is to compel employment decisions to fulfill them, regardless of qualifications, regardless of a good faith effort to fulfill them and regardless of the availability of capable applicants.

> Goals, on the other hand, signify a different concept and employment practice. If, for example, an institution has been deficient in training, upgrading, promoting, or otherwise treating employees without regard to race, color, religion, sex, or national origin, goals are projected levels of hiring that say what an employer can do if he really tries. By establishing goals, the employer commits himself to a good faith effort that is most likely to produce results.
>
> . . . If a university falls short of its goals, that in itself does not result in noncompliance; a good faith effort to achieve those goals remains the test (25).

Pottinger's statement attempts to deal with misunderstandings such as those voiced by Paul Seabury in a widely read article in *Commentary* (33). Seabury fears that when departments hire and must consider the institution's goals and timetables, they will "come up not with the *best* candidate, but with the best-qualified *woman* or *nonwhite* candidate." Elliot Richardson (33a), Secretary of HEW, denies that HEW is not concerned about maintaining quality in a reply to Seabury. Richardson cites a Third Circuit Court of Appeals decision, which held:

> In direct procurement the Federal Government has a vital interest in assuring that the largest possible pool of qualified manpower be available for the accomplishment of its projects.

The problem of determining what "best qualified" means has also arisen. There have been reports that HEW's Regional Offices have "suggested" to universities that they "give preference to women and minority applicants who have qualifications higher than the least qualified member of any department which has a job opening" (45). But it appears that this policy does not conform to OCR's view that faculty selection be based on those "who are competing" for the position (24). Replying to this point, one writer (45) is concerned that HEW might deny an employer the option of concluding that there is no qualified applicant to be hired. This issue has already been raised in Princeton University's proposed affirmative action plan (26a). Describing the difficulties in determining goals and timetables for Princeton, the plan notes:

> The quality of the faculty is critical for a university like Princeton . . . . So rare is the special combination of qualities for some tenure positions that they may remain vacant for years.

Given these considerations, Princeton projects goals and timetables for entire university divisions rather than for particular departments.

It is apparent that the concern over maintaining quality will not be readily alleviated by discussions of the distinctions between goals and quotas, and explanations of legal and agency policy. New procedures for recruitment and hiring, to be discussed below, will have to take account of the concern for maintaining high standards of quality in professional university staff.

Required Utilization Analysis

As a necessary component of goals and timetables requirements, Revised Order No. 4 requires that a "utilization analysis" be included in every affirmative action plan (60-2.11). This analysis requires a university to look at its current staff on the basis of race and sex and to determine the extent to which the staff reflects the available employment pool for each group. In job categories where the current staff does not reflect a fair proportion of the available employment pool, the university is required to develop goals and timetables to remedy this defect.

The utilization analysis, designed to apply to all Federal contractors, focuses on the employment pool in the contractor's "immediate labor area." Specifications include: size of the female employment pool; "general availability of women having requisite skills. . ."; and availability of women who want employment. Also to be considered are women who may be promoted within the organization, and "the degree of training which the contractor is reasonably able to undertake. . ." (60-2.11). Sandler and Steinbach (34c) report that the Department of Labor and HEW recognize that a national employment pool must be the basis of a utilization analysis for academic and professional personnel.

Some college officials dispute the validity of "utilization criteria" for a university community. They argue that professional staff recruitment involves: "heavy dependence upon the specific qualifications of individuals rather than upon job specifications for defined jobs; recruitment in a national rather than a regional or local labor market; the specialized training and education required for faculty positions" (41). Women's groups reply that the utilization criteria are "sufficiently general" to be used in university hiring practices (34c).

"Cluster Groups," a women's organization established at the University of Michigan to monitor that institution's affirmative action progress, suggests specific areas that should be examined in a utilization analysis (21g). These are:

1. Why do some schools or departments have a high percentage of women graduate students, but a low percentage of women in faculty and administrative posts?. . .
2. Is initial placement different for men and women with comparable qualifications?. . .
3. What is the percentage of women in research positions compared to the percentage of women on the tenured faculty?. . . What is the ratio of males to females in tenured faculty, non-tenured faculty?
4. Why do some departments have a very high proportion of female graduate students at the master's degree level, and a very low proportion of females studying for the Ph.D.?
5. What is the ratio of men to women on decisionmaking and policy setting committees?

Universities have also found difficulty with Revised Order No. 4's requirement that they furnish current employment statistics broken down by race and sex as part of the institution's affirmative action plan (60-2.11). HEW needs this information as a basis for judging the institution's compliance status, and failure to supply the data invokes the threat of sanctions. One recent example of the problems raised by this requirement for a university was HEW's call for assurances from the City University of New York that it would furnish the following information:

1. A list consisting of the name, job classification (or occupational title), department, date of hire, salary grade (if applicable), sex, race, and source of referral of all employees hired during the last 12 months.
2. A master list (computer printout acceptable) of all employees presently on the University's payroll, by department, showing name, job classification (or occupational title), date of hire, salary grade, current rate of pay, race, sex, age and date of tenure (if applicable) (6a).

CUNY officials met with OCR in July 1972, and during the meeting it was agreed to:

> . . . [protect] and [respect] the university's policy of not maintaining personnel data by individual employee's name that could be used for the implementation of discriminatory policies based upon race, sex, age, ethnic origin or religion (6b).

Establishing Goals and Timetables

University personnel who are responsible for planning affirmative action programs face what is perhaps their most difficult task in the area of developing goals and timetables for hiring faculty in order to comply with affirmative action requirements. On any campus, decisions must be made as to the functional level at which goals will be established (i.e., departmental, by school, or university-wide), the recruitment pool upon which the goals will be based, and the time period in which goals should be achieved. Indications are that HEW will require departmental goals.

The difficulties university personnel encounter in making such decisions are compounded by a scarcity of information on how other institutions are dealing with these problems. Institutions are uninformed for a variety of reasons. First, many universities have not yet even met the problems posed by the Order. Since Revised Order No. 4, which spells out a university's obligation to deal with sex discrimination, was only issued in December 1971, many institutions have not yet developed, or are only in the process of developing, goals and timetables. Second, universities have received little guidance from HEW on how to develop affirmative action goals; it is hoped that the official guidelines (see note 8 above) will provide this assistance and impose uniformity among HEW's Regional Offices, since conflicting policy from the Regional Offices and the National Office has also been a source of confusion (34c). Third, institutions that have submitted plans generally have received little or no information from HEW about whether their plans are acceptable. Finally, universities that have developed plans with goals and timetables generally are very unwilling to make them public. The University of Pennsylvania and Harvard University have said they plan to change this nondisclosure policy and distribute their plans when HEW notifies them that they have been accepted. But it is not certain whether the published plans will include the universities' goals and timetables when they are released. For example, Tufts University, whose January 1971 plan (44) was approved by HEW, will not publish its goals and timetables. The reasons behind Tufts' refusal are unclear. HEW will release the plans with goals and timetables to the public upon request.

Available Recruitment Pool

Institutions that have provided information on their goals show how they formulate and coordinate long-range plans for future faculty employment. As a first step, a university and its individual departments must determine what is meant by the available employment pool from which faculty members can be recruited. In the view of HEW and women's organizations, statistics that reveal the national proportion of formally qualified women and minorities provide a basis for judging the pool of qualified and available personnel for academic positions. Universities contend that "even more refined statistics would not provide information of markedly increased validity" (34c).

In its draft affirmative action plan, Dartmouth College (8) appears to share HEW's and the women's organization's evaluation of the recruitment pool. The Dartmouth report notes that women hold over 20% of the doctorates in many fields on a national basis and "substantial percentages" in other areas; for all disciplines, this figure is 13.3%. The report therefore finds that "[s]ince the number of women candidates available for faculty positions indicates no serious shortage in the market, the first step to be taken by Dartmouth is to organize a systematic recruitment effort" to employ more faculty women (8).

Three universities have adopted procedures for narrowing the employment pool that may be of interest to other institutions. In a memorandum to department chairmen, University of Wisconsin Chancellor Edwin Young recommended:

> Become acquainted with the percentage of women who have recently received the Ph.D. degree in your field from major graduate institutions and compare this with the percentage of women on your junior staff (46c).

To assist chairmen in hiring nontenured faculty, he enclosed statistics from 66 institutions of the number of men and women who received a Ph.D. in the department chairmen's field from 1967-69 noting that "the universities are selected for both excellence and number of graduates" (46e).

At Stanford University (40a), a report on affirmative action procedures recommends that its goal for representation of women on the Academic Council be a number proportionate to the number of Ph.D.'s and other advanced degrees Stanford grants to women. The report also suggests that other data showing a higher

number of women graduated at comparable insitutions should also be considered.

Princeton University's affirmative action report suggests that most of its divisions already have a fair proportion of women Ph.D.'s as instructors. It uses the number of women granted the doctorate nationally during the years 1960 through 1969 (10.9%) as its recruitment pool. Its Humanities and Social Sciences divisions have higher percentages of women employed than this figure; however, Natural Sciences has 9.4% women, and Engineering and Applied Sciences .046%. The University points out:

> [There may by the] possibility of significant differences in numerical goals depending on whether one stresses merely attaining some fixed proportion of the fully qualified supply available or emphasizes instead Princeton's educational and moral purposes, along with other economic and social objectives, as guides in an overall program aiming at professional excellence (26a).

Princeton's choice of its recruitment pool has been criticized by a regional Task Force on Equal Academic Opportunities of the National Organization for Women. The task force questions Princeton's use of the 10.9% figure because it does not take into account the fact that:

- A higher percentage of women than men Ph.D.s go into teaching;
- Due to past discrimination there is necessarily a large backlog of underutilized women Ph.D.s;
- Women in some fields earn a percentage of Ph.D.s much larger than 10.9% (for example, French, 40.49%) (26c).

The Modern Language Association (1) has published affirmative action guidelines that suggest goals for the disciplines included in their organization, which has a high percentage of women:

> Plan for gradual hiring, within the next three years, of a number of women proportionate to the number of those granted Ph.D.'s in the last five years. That statistic is 31% for the profession as a whole in the past five-year period; 33% for 1970. In the last 50 years, the statistic has never fallen below 20%; it has averaged 25%.

Reports and materials from Tufts University, the University of Michigan, and the University of Pittsburgh do not discuss the problem of defining recruitment pools although they indicate

plans for affirmative action hiring of women and minorities. Michigan (21d) and Pittsburgh (23a) provide statistical goals, but Tufts University does not in its published report (44a). Eastern Washington University in Cheney, Washington (11a) also projects general hiring goals without discussing the recruitment pool it is using.

The "Unit" for Attaining Goals

Revised Order No. 4 requires for all Federal contractors:

> Establishment of goals and objectives by organizational units and job classifications, including timetables for completion (60-2.13e).

Universities that have developed goals for women interpret the phrase "organizational units" in three different ways: as applying to the entire university; as applying to divisions and schools in the university; and as applying to each department in the university.

Women's groups point out that meaningful goals can be established only at the departmental level, where the hard decisions are made on how many and which academic personnel shall be recruited, hired, and promoted. Goals set at this level will make departmental administrators more accountable for their decisions, and the possibility of achieving affirmative action goals may therefore be increased. A women's organization at the University of Michigan also points out that when goals are set for a unit larger than the department, such as the Faculty of Arts and Sciences, discrimination may exist in one department while fair practices occur in another. The goals for the "unit" may then be reached, but the rationale for setting goals—to ensure nondiscriminatory practices—will not have been achieved (21b).

Princeton University has been criticized for establishing divisional rather than departmental goals. The New Jersey President of the Women's Equity Action League comments on the dangers in establishing this type of unit:

> I. . .have doubts about averaging the goals of departments that represent wide ranges of the availability of women: physics, where women hold 2% of the Ph.D.'s, averaged with biology, where women hold 20%;. . .It also seems possible to me, with the divisions system, to maintain unisexual departments within a division; if the French people hire enough women, the music department can continue to exclude them entirely (26b).

In the material received for this report from colleges and universities, only Princeton University attempts to explain the rationale for establishing goals for units larger than indivdual departments. Princeton University reports that:

> Given the keen competition for top-flight teacher-scholars, their very limited numbers in the specialized branches. . .and the uncertainties as to when an opening may occur in a specific field at Princeton, any estimate of the liklihood that a woman or a black would be appointed to particular positions in an academic department during the next year or two would be the crudest guesswork. . . .For the Princeton faculty as a whole. . .the law of averages make estimation of hoped-for goal achievement less subject to the wide and erratic variations bound to occur in particular parts of the institution despite evenly-spread and aggressive good faith efforts (26a).

It should be pointed out that, in general, universities have dealt with the problem of establishing goals by discussing their projections of "new hires" who enter the institutions at the junior, untenured level. They have not set goals for women in senior ranks because of the difficulty in deciding what consitutes an "available pool" at those ranks. Instead, the expectation is that a reasonable percentage of the newly-hired women will achieve tenure, and thereby spread the distribution of women through all ranks in a department after a probationary period averaging about 5 years. Wisconsin's goals, like those established at other universities, are projected for a period of time to satisfy the requirement for timetables called for by Revised Order No. 4. Projections range from 2 (26a) to 10 (8) years. The Chancellor of the University of Wisconsin has noted the problem of establishing goals for the tenured ranks, and suggests to department heads that recruitment efforts should be made for hiring at this level if there are "no or only a few tenured women or if women are present in much smaller numbers than in your discipline as a whole" (46e).

Affirmative action plans speak of goals in terms of "percentages of new hires" (26a and 46e) and numerical projections for department or other unit (8 and 21d).[10] Percentage projections are believed to give the institution more flexibility on a yearly basis, given the turnover and financial constraints in any

[10]Goals are understood to refer to the hiring of full-time, regular faculty, but part-time employees are not necessarily separated out from the affirmative action plan's projections.

particular department. One writer (45) suggests that the percentage-of-new-hires' criterion might conceal the fact that women and minorities were being terminated or not promoted, and he believes that this standard needs additional safeguards to be acceptable to HEW.

Alterations in Traditional Hiring and Promotion Procedures

Because they are required to make a "good faith effort" to meet their goals and timetables, universities are establishing new procedures for the recruitment, hiring, and promotion of faculty. These procedures are designed to ensure the equitable treatment of women and minorities and to build accountability into the current systems of hiring and employing academic personnel. The quality of these procedures, as well as their success in recruiting women and minorities, will serve as a measure of a university's "good faith efforts."

New procedures are needed to meet affirmative action goals because, as one writer has pointed out, current practices have produced an "apparent underutilization" of women and minorities. He notes:

> . . .an "old boy system" has prevailed. Oral inquiries at the annual conventions of various disciplines has, in fact, been a principal, if not the major, method of recruitment (45).

In general, the new procedures broaden the area of recruitment and indicate to the academic community an institution's commitment to affirmative action.

To facilitate recruitment activities, a variety of organizations are providing statistical and descriptive information about potential women applicants. Professional organizations such as the Modern Language Association and the American Historical Association are developing rosters of women Ph.D's and making them available to departments around the country. The Project on the Status and Education of Women of the Association of American Colleges also has provided statistical information on women who have earned doctorates (31). In an interesting development, the Ford Foundation has funded a 2-year program, the New England Consortium for Women in Higher Education. Located in Alumnae House, Brown University, the Consortium will seek information

about job openings, and the status of women and minorities on college campuses. Its scope is regional but it expects to assist in requests outside its own area. On an institutional level, Yale University's Ad Hoc Committee to End Sex Discrimination (47) has proposed that Yale maintain professional records of its alumnae to aid other institutions in recruiting women.

As a first step in the new recruitment procedures, colleges have issued policy statements affirming their roles as equal opportunity employers for minorities *and* women as a matter of institutional policy. These statements are also publicized in recruiting off campus as well as on the campus, as called for by Revised Order No. 4's "Dissemination of the Policy" (60-2.21) requirement. The recruitment procedures implementing this policy establish lines of responsibility from the department chairman to his university administrators, with the heaviest burden falling on the department chairman.

Columbia University, as part of its interim affirmative action program, has developed employment procedures indicative of the detailed work that may go into affirmative action recruitment efforts under HEW supervision (45). The Executive Vice President for Academic Affairs and Provost at Columbia issued to all Deans the following requirements for new appointments:

> . . .no offer of academic employment in full or part-time positions at the rank of instructor or above may be tendered without my prior approval. [His office must also be notified of all vacancies.] (45)

To help document the fact that nondiscriminatory practices have been followed by Columbia in the recruitment process, the Vice President for Academic Affairs specifies the necessary materials that must accompany any recommendation for academic appointments. When documentation is missing or incomplete, deans must explain in writing why this situation has occurred. The documentation required includes:

> [T]hat which demonstrates the efforts made to identify and consider women and members of minority groups who are qualified for the position. Pertinent here are indications of the institutions and professional groups canvassed, the media of communication utilized in the search, and sources of referral for applicants. Suggestions to assist you and chairmen in searches for qualified women and minority group members are being prepared for distribution by my office. (45)

The Vice President's office also requires two forms to be filled out: the "Confidential Applicant Pool Report" for all job inquiries received, and a listing of each applicant's name, sex, ethnic group, Vietnam veteran status, source of referral, and disposition of the candidate. In addition, the "Most Qualified Candidates" form requires a detailed statement explaining the order of preference for the candidates, and supporting documentation must also be kept available.

At the University of Wisconsin, procedures have also been put into effect that require a department to demonstrate active efforts to hire women before an academic appointment can be approved. Department chairmen are given primary responsibility for establishing goals based on their anticipated needs and statistical information on the pool of Ph.D.'s available in their fields, which is supplied by the University. Departmental goals are reported twice a year (46g) and if a department does not meet its goal in 1 year, it is expected to raise its goal in the following year to compensate. A department must also present documentary evidence that it has made an effort to recruit women when it does not meet its goal (such as a description of recruitment efforts). Departments are also urged to enlarge their pool of women applicants through such measures as making specific requests for women candidates at other institutions; sending for the dossiers of women who are "genuine possibilities"; and examining the nontenure ranks for women in academic staff positions who may be promoted to tenure-bearing positions.

There is, of course, no assurance that departments or schools will readily carry out their mandate to develop goals and timetables, or that they will seriously adhere to recruitment and employment guidelines established for their university. The University of Pittsburgh's Annual Report (23) describes the difficulties the central administration of the university has encountered from its divisions in obtaining cooperation with the university's affirmative action plan. As one example of a lack of responsiveness, a Provost's memorandum informs the faculty that they have fallen far short of achieving their 1970-71 goals, noting that guidelines presented during the previous year were not, with some exceptions, "rigorously" followed. Consequently, the memorandum announces the implementation of new "regulations" that must be followed for faculty hiring. Included are provisions that currently occupied full and part-time positions becoming vacant, as well as new full-time and part-time positions,

will be assigned for hiring purposes to the Dean of the school. The Dean and the Provost will only approve appointments when they are for women and/or minority group members or when "concrete evidence" is provided to show that a satisfactory search was made to find women and minority group members.

The implementation of new practices for recruitment and hiring have given rise to fears of potential "discrimination in reverse" (4) that cannot be readily ignored by the academic community. A recent article published a letter of rejection that was sent to a candidate for an academic position. The candidate was told that although he was the "top candidate," his "ancestry" did not meet affirmative action requirements; therefore, he could not be hired.[11] While this letter may reflect practices at one institution, it is not the announced policy of most colleges and universities implementing affirmative action programs. For example, the Chancellor of the University of Wisconsin recommends that when women are being eliminated from consideration for academic positions, despite active recruitment efforts, the department involved should reexamine its screening process and determine the degree of subjectivity involved in its judgments of "qualified." However, the Chancellor does not advocate that a department practice reverse discrimination at the expense of quality:

> On the one hand we do not want to prefer a woman who is "qualified" but not distinguished to a markedly superior male candidate . . . . On the other hand, one can define "qualified" so narrowly that the term could be applied only to one candidate. Among equally well-qualified candidates, a department with fewer women on the staff than are available should prefer women applicants until the imbalance has been corrected (46e).

This statement is in accord with J. Stanley Pottinger's belief that criteria that have the effect of eliminating women or minorities cannot be used unless the criteria are proven "essential" to the position (24).

Although Executive Order 11246, as amended, does not discuss preferential hiring, Revised Order No. 4 has a provision that guards against reverse discrimination (27):

> The purpose of a contractor's establishment and use of goals is to insure that he meets his affirmative action obligation. It is not

[11] Institutional affiliations were deleted from this letter. This letter violates Executive Order 11246, as amended, and Title VII because it says preferential treatment has been given to less qualified candidates.

> intended and should not be used to discriminate against any applicant or employee because of race, color, religion, sex, or national orgin (60.2-30).

Similarly, under Title VII, preferential treatment for any individual or group on the basis of race, color, religion, national origin, or sex is specifically prohibited.

In a development related to affirmative action recruitment and hiring efforts, some steps have been taken to provide special funds for recruiting and hiring women and minorities. These funds would enable institutions to meet affirmative action commitments at a time when budgetary problems have imposed restrictions on hiring.

Thus, Stanford University has established an "Affirmative Action Fund" for the entire university (40b), to be used in special instances where a minority group member or female candidate could not otherwise be hired. For example, the candidate might be hired to fill a vacancy that will occur a year later through the retirement of another faculty member, with the Fund paying the candidate's salary in whole or part. Stanford's Provost notes that candidates appointed in this manner are not to receive "special treatment." A report on the status of women at Stanford (40a) notes another danger in special funding, although it endorses this concept, in that special funding could:

> . . .reduce the commitment in individual departments to seek minority and female candidates for regular faculty positions in the process of normal search procedures.

The limited amount of money available in the Fund ($75,000) is intended to discourage departments from relying on this source for all recruitment efforts (40b).

At Dartmouth College (8), each department has received special funding to aid in its recruitment efforts for women and minorities. Yale University's "Ad Hoc Committee to End Sex Discrimination at Yale" has also proposed that special funds be used to hire women for regular faculty positions on a basis comparable to the funding now provided for black faculty (47a). This program would be reviewed after 5 years, and a proposed "Office to Equalize the Status of Women" would monitor the equality of promotions for women brought onto the Yale faculty through this program.

Public colleges, which do not enjoy private institutions' budgetary flexibility, cannot easily establish special funds for affirmative action recruitment. Indeed, some public universities point out that financial problems create restraints on the implementation of affirmative action programs. A review of school and department reports at the University of Michigan states:

> Low turnover in faculty at the University was cited as making it difficult to correct inequities in the ratio of women to men faculty members. In this period of lean budgets and curtailed hiring even the best affirmative action commitments are difficult to implement (21h).

File Review

In addition to preventing future discriminatory practices, Revised Order No. 4 is also concerned with remedying the effects of past discrimination (60-2.13; 60-2.20). The development of "file review" procedures is one method of meeting the Revised Order's remedial requirements.

The University of Michigan's file review procedure (21e) includes a computer search to determine the existence of salary inequities between men and women in the same job classification. (An employee may, however, also use other means of appeal besides the file review procedure and may also initiate a request for file review if her file is not cited for review in the computer search.) Files that show such inequities are identified by social security number and are reviewed by a committee consisting of a Women's Commission representative, a representative from the University's personnel department and/or the office of the vice president for academic affairs, and an ad hoc review board representing both the affected employees and their supervisors. The review team receives a summary of the employee's record, that includes: (1) initial salary; (2) date of employment; (3) salary before employment; (4) classification title; (5) level of educational attainment; (6) experience; (7) actual work performed as distinguished from classification; (8) salary increases and dates; (9) promotions and dates; and (10) other relevant facts.

If the members of the review team agree that no sex discrimination has occurred, a statement is prepared for the file. If they agree that there has been sex discrimination, a report is prepared

for review and decision by executive officers of the university. If the review team cannot agree on findings, their individual reports are forwarded to an Ad Hoc File Review Board, and the Board's recommendations are in turn submitted to executive officers of the University for a decision. Remedial action may include salary increases, promotion, or the award of back pay. To prevent pressures on an employee, the procedure provides that once a review is initiated, it cannot be stopped.

Michigan's procedure has been criticized because it deals only with differences within job classifications and does not detect generalized job discrimination. The Cluster Group report notes:

> The differences between men's and women's salaries in the same job classification may not be as great as differences occurring through men being employed disproportionately at higher levels and women, equally qualified, at lower ones (21g).

The Cluster Group report recommends that Michigan develop a review procedure for female academic appointments similar to that used at the University of Wisconsin.

Wisconsin's procedure (46c) requires individual departments to review both the salary levels and academic ranks of its female members to ascertain if they are comparable to male faculty who have similar qualifications and productiveness. When there is inequity in salary, merit increases may be awarded, and women who suffer from an inequity in academic rank may be promoted. If no change in status is proposed, a statement of reasons must be provided. To ensure the review program is carried out, the deans of the units must certify that these procedures have been followed when they submit their budgetary requests.

A major source of contention in the area of file review programs has been the debate over the awarding of back pay to compensate for the effects of past sex discrimination. Although some back pay awards have been made, institutions argue that Executive Order 11246, as amended, does not require the awarding of back pay. The University of Oregon's Special Assistant for Legal Affairs contends there is nothing in the Order that "explicitly or even remotely provides that back pay reimbursement to employees may be assessed by the enforcement authority" (19). Institutions also fear that great financial problems would result from a back pay requirement and that the loss of funds occasioned through such awards would create problems in hiring under affirmative action plans and in establishing new educational priorities (19). Women's

groups point out that if back pay awards are not made, institutions might be sued for having breached their Federal contracts when the salary inequities occurred (34c).

HEW contends that when a university as a Federal contractor has salary differentials based on sex, it has violated the Executive Order, and the Federal Government is entitled to have past contractual breaches remedied. HEW also maintains that discrimination continues against an employee until she is "made whole" by the award of back pay (19), and it points out that court decisions have awarded back pay in cases of employment discrimination (34c).

There is also some disagreement over the time period for which an institution may be liable for back pay awards. Several possibilities exist: the October 13, 1968, effective date of the Executive Order or the date from which the discrimination began, whichever is the later; June 9, 1970, the date of publication of the Department of Labor's sex discrimination guidelines (19) (see page 31); or the 2-year limitation on back pay prior to the filing of a discrimination charge, as specified in Title VII, as amended. At present, the Department of Labor is considering which of these courses it will follow.

Parttime Employment

The demand for affirmative action programs has called attention to the problems of parttime faculty members who hold irregular, non-tenure-bearing positions, and who do not share in the status and privileges of fulltime faculty members. The overwhelming majority of these parttime faculty members are women.[12] Several institutions have changed their policies on parttime faculty employment to accord these employees equitable treatment.

Princeton University (26a) will now accept parttime faculty appointments on a regular but limited basis. Departmental recommendations for parttime employment, or for shifts to either full- or parttime status, will be evaluated on the basis of the

[12]Rumbarger, Margaret, American Association of University Professors, and Sheila Tobias, Wesleyan University, "Part-time, Full Status Appointments for Academic Women: Problems and Possibilities" [tentative title]. Paper to be presented at the American Council on Education annual meeting, October 4-6, 1972.

number of part- and fulltime faculty members within the department, as well as on the basis of the individual involved. Parttime faculty members at the assistant professor level will, like fulltime faculty, be notified in their sixth year whether they will be recommended for promotion to associate professor. The Dean of the Faculty at Princeton notes that the university, as well as individual faculty members, may benefit from the increased flexibility that employing parttime faculty can provide. Such benefits may include: fulfilling a priority need in a specialized area; obtaining a distinguished teacher; increasing departmental strength with two halftime appointments; and, finally, facilitating the appointment of more women faculty members.

Wesleyan University has three proposed categories for parttime faculty: "moonlighters," who teach one course at the university and are employed elsewhere, but are not entitled to any faculty privileges; "twilighters," who are not elsewhere employed but do not have regular parttime positions (they have no departmental vote, but get prorated fringe benefits); and "sunlighters," who have regular faculty appointments, participate on a prorated basis in all faculty activities and privileges, and may become fulltime (42).

At the University of Connecticut (42), the University Senate approved a set of guidelines for the employment of parttime faculty members during a 3-year trial period. The guidelines include requirements that parttime faculty members fulfill at least 50 percent of normal faculty duties; that only those who would be qualified for fulltime appointments be appointed parttime; that promotion for parttime faculty be on the same basis as that for fulltime faculty, but that a longer period in rank should be expected; and that standards governing the evaluation of regular faculty performance apply to parttime faculty members. A recommendation that parttime appointments lead to tenure was tabled because this would require the Board of Trustees to change the laws and bylaws of the University of Connecticut. These laws may be changed if the trial period is successful.

Monitoring Affirmative Action

Revised Order No. 4 requires a contractor to appoint an "executive" who is to have a wide-ranging set of responsibilities to oversee the implementation of the contractor's affirmative action programs. The size of the organization determines whether this task should be the affirmative action officer's only responsibility

(60-2.22). Complying with this provision, many insitutions have developed administrative structures to oversee their affirmative action programs. At several institutions, university women have organized separate monitoring groups that are not part of the official university structure.

In one example of such an official structure, the University of Michigan has established a Commission on Women to develop recruitment, employment, and promotion practices to implement affirmative action goals. Going beyond these activities, Michigan's Commission on Women established "cluster groups" to monitor affirmative action programs in the various divisions of the university. These cluster groups, working on a voluntary basis, evaluated the structure and the progress of the University's affirmative action program and recommended changes in it (21g). In addition to these officially sanctioned groups, an organization entitled "PROBE into the Status of Women at the University of Michigan" has been active in analyzing and making recommendations for changes in Michigan's affirmative action plan (21a). At this writing, it is difficult to determine the impact that these official and unofficial evaluations and recommendations have had on the university's affirmative action programs.

Dartmouth College's draft affirmative action plan provides for the appointment of a Special Assistant to the President to serve as the Affirmative Action Officer (8). This officer will be aided by a Review Board composed of the Vice President (Women's Affairs), serving as chairman; the Vice President and Dean for Student Affairs or his representative; the Vice President and Dean of the Faculty, or his representative; and the Personnel Director. In addition, review committees representing faculty, administration, and staff will aid the Review Board in situations involving possible discrimination in recruitment or employment, and will also monitor grievances related to sex or racial discrimination.

In a similar plan, Duke University has proposed the appointment of an affirmative action administrator who will have overall responsibility for the implementation and coordination of Duke's affirmative action plan. His activities will be subject to review by the university's Equal Employment Opportunity Committee and by the President, the Chancellor, and the Vice President for Business and Finance. The Equal Employment Opportunity Committee will be composed of faculty and administration members appointed by the President to rotating terms, and will have the

responsibility of reviewing the university's affirmative action plan on a regular basis (9a).

Guidelines for Preventing Sex Discrimination

Under Revised Order No. 4, compliance with the Department of Labor's guidelines for preventing sex discrimination (35) are considered part of the employer's affirmative action program (60-2.13). These guidelines set standards for hiring and promotion on the basis of sex and, most importantly, describe what constitutes nondiscrimination in the area of "fringe benefits." The Equal Employment Opportunity Commission, as administrator of Title VII, has also issued its own sex discrimination prevention guidelines that must be met by all colleges and universities (17). Although both sets of guidelines are similar in many respects, there are some differences that need to be resolved for the benefit of college administrators who must incorporate the guidelines into university policy.

Generally, both sets of guidelines agree that recruitment and employment must not discriminate on the basis of sex unless sex is a "bona fide" job qualification; but the EEOC guidelines explicitly prohibit stereotyped sexual characterizations, or preferences of other employees as considerations in recruitment and hiring. Both the EEOC and Department of Labor guidelines hold that job advertising must not specify "male" or "female" unless there is a bona fide occupational difference, and they supersede any applicable sex-oriented state employment legislation. The elimination of separate promotion lines and seniority systems based on sex is also required by the EEOC and by the Department of Labor.

In addition, sex discrimination guidelines have focused attention on discriminatory practices in the area of "fringe benefits." As defined in the EEOC guidelines, "fringe benefits" include "medical, hospital, accident, life insurance and retirement benefits; profitsharing and bonus plans; leave; and other terms, conditions, and privileges of employment." In contrast, the Department of Labor's guidelines do not provide a definition. The EEOC guidelines are more specific than the Department of Labor's in detailing unlawful discriminatory fringe benefit practices. The use of "head-of-household" criteria in granting employment benefits is prohibited, since this tends to discriminate against women employees and has no relationship to job performance. Also prohibited is the granting of benefits to wives and families of male

employees when the husbands and families of female employees do not have the same benefits.

In the area of retirement benefits, the EEOC guidelines are stronger than the Department of Labor's guidelines. The EEOC notes:

> It shall be an unlawful employment practice for an employer to have a pension or retirement plan which establishes different optional or compulsory retirement ages based on sex, or *which differentiates in benefits on the basis of sex.* (Emphasis added.)

In contrast, the Department of Labor guidelines report:

> In the area of employer contributions for insurance, pensions, welfare programs and other similar "fringe benefits" the employer will not be considered to have violated these guidelines *if his contributions are the same for men and women or if the resulting benefits are equal.* (Emphasis added.)

If Labor's guidelines are followed, the TIAA-CREF plan used by many colleges and the state retirement plans affecting public institutions is not considered discriminatory. Under these plans, the institutions contribute equal amounts for men and women, but the retirement income depends on the employee's sex. Women receive less in monthly income than men because actuarial tables predict they will live longer than men. Over a lifetime, men and women receive the same income.[13] Under the EEOC guidelines, however there is some question over the interpretation of the phrase, "which differentiates in benefits on the basis of sex." If smaller monthly pension payments to women are judged to be discriminatory, despite actuarial findings, then the terms of the retirement policies will have to be changed to provide equal monthly benefits. EEOC is advising women teachers to file charges of sex discrimination in retirement plans when TIAA membership is a term or condition of employment.[14]

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[13]"New Guidelines on Sex Discrimination As They Relate To Retirement Plans," Project on the Status and Education of Women. Association of American Colleges, April 1972.

[14]Elsa D. Glass, Attorney, EEOC, to author. August 8, 1972.

There are also differences between the EEOC's and the Department of Labor's sex discrimination guidelines on the question of maternity leave. The EEOC guidelines are generally recognized to be stronger and clearer than Labor's. Under the EEOC:

> Disabilities caused or contributed to by pregnancy, miscarriage, abortion, childbirth, and recovery therefrom are, for all job-related purposes, temporary disabilities and should be treated as such under any health or temporary disability insurance or sick leave plan available in connection with employment.

Furthermore, employer practices, whether written or unwritten, concerning the employee's status and benefits under the employer's health insurance plan apply to pregnancy and childbirth as they would for any other temporary disability.

In contrast, Labor's guidelines on this subject specify that:

> When, under the employer's leave policy the female employee would qualify for leave, then childbearing must be considered by the employer to be a justification for leave of absence for female employees for a reasonable period of time.

If the employer has no leave policy, he must still allow the female employee a "reasonable period of time" for childbearing and provide for reinstatement without loss of employment status. "Leave policy" is not defined under Labor's guidelines. It may refer to sick leave, disability leave, annual leave or any other type of leave the employer offers. The vagueness of the provision provides the employer and employee with little guidance with which leave policy applies to childbearing. The Department of Labor is planning to rewrite this provision, but there is no indication when the revised guidelines will appear.

The treatment of maternity leave as a temporary disability is recommended by the Citizens Advisory Council on the Status of Women (18) in a statement similar to the EEOC provision cited above. This organization also recommends that women should not receive special maternity benefits because such action would:

> . . .[treat] women as a class and [ignore] individual differences. The essence of the fair employment concept is individual rather than class treatment.

Institutional Maternity Leave Policy

To academic women, reform of university policies on maternity leave has been an important goal. Several institutions have

adopted new maternity leave policies, and the EEOC and Department of Labor guidelines will probably cause other colleges and universities to follow suit. One model affirmative action program (32) calls for "Freedom from Biological Penalties," including six weeks of maternity leave with no loss of job, status, or benefits. The Modern Language Association guidelines (1) ask colleges to:

> Establish policies that allow academic careers to be compatible with the bearing and rearing of children and do so in such a way as to allow men to share in child care. Grant six weeks of paid medical leave to women for childbirth; grant a term's leave for child care on request and without salary to either parent.

Princeton University and Stanford University have adopted maternity leave policies that take academic considerations into account.

Princeton University's change in maternity leave policy results from its "special interest in the recruitment of faculty women that coincided with the implementation of coeducation" in September 1969 (26). The new leave policy focuses on the granting of tenure to female assistant professors or lecturers who have a 3-year appointment. At her request, a woman in line for tenure who becomes pregnant may be relieved from all or part of her teaching duties for 1 year for each pregnancy and, if she requests it, a decision on tenure may be postponed for a maximum of 2 years. However, a woman may request a postponement on a tenure decision whether or not she has taken any maternity leave. A request for a delay on tenure must be made when she becomes pregnant or at the beginning of her sixth year in rank, whichever is later. Pregnancy or a leave of absence as a result of pregnancy does not extend the original 3-year appointment.

Stanford University goes a step further in its maternity leave policy. A woman who takes leave for pregnancy and infant care may have her basic appointment extended "by the amount of time taken for such leave, making it parallel to policy regarding military leave for faculty" (40a). Besides this provision, women may also request that a tenure decision be delayed for 1 year for each child, up to a maximum of 2 years.

Until a short-term disability plan is adopted, the University of Maine has developed a maternity leave policy which allows professional and nonprofessional personnel to take up to 2 months of paid leave for childbirth and guarantees them a return to their temporarily vacated positions as well as retention of seniority and other benefits. Either parent may also take a 1 year leave for

childrearing, but not extending beyond one semester consecutive with and in addition to the one in which childbearing leave is initiated (20a).

Nepotism Policies

Because of the recent Federal legislation and rulings prohibiting discrimination on the basis of sex in employment, universities are reexamining and changing their nepotism policies. Anti-nepotism rules, on a departmental or university-wide level, prohibit the employment of two people who are closely related. Originally developed to avoid the hiring of incompetent people and to prevent father-son alliances, these rules overwhelmingly discriminate against married women whose husbands are faculty members (10). Beyond the problems of discrimination these rules pose, they create other problems in current academic life. There are indications that very substantial numbers of male and female Ph.D.'s marry within their discipline (10). If universities have anti-nepotism regulations, they face the potential loss of highly qualified faculty members and narrow the available recruitment pool of women with doctoral degrees by discriminating against faculty wives in their hiring practices.

The effects of nepotism rules on female employees was recognized by HEW when it investigated the University of Michigan in 1969. HEW required Michigan to analyze the past effect of its nepotism rules and retroactively compensate to October 13, 1968 those who suffered discrimination under those rules (10). Michigan has since that time established a new nepotism policy requiring that appointments and promotions be based on considerations of merit and that relationship by marriage or family should be neither an advantage or a deterrent. The policy further requires that:

> No individual shall be assigned to a department or unit under the supervision of a relative who has or may have a direct effect on the individual's programs or performance. . .without the prior written approval of the administrative head of the organizational unit. . .(21f).

Michigan's policy takes into consideration the valid problems caused by the employment of related family members in the same department and, in this sense, is in agreement with the American

Association of University Professor's statement on "Faculty Appointment and Family Relationship":

> The Association recognizes . . . reasonable restrictions on an individual's capacity to function as judge or advocate in specific situations involving members of his or her immediate family. Faculty members should neither initiate nor participate in institutional decisions involving a direct benefit. . . to members of their immediate families (15).

The University of Wisconsin has developed a detailed nepotism policy that provides safeguards against abuses in the employment of relatives that are not discussed in the Michigan policy. Wisconsin seeks to avoid conflicts of interest between closely related people in the same department or area of the university, but also requires that the "best qualified and available" candidate be hired for a position, without regard to "affinity or consanguinity" (46a).

The guidelines implementing this policy are: (1) the policy shall not be applied retroactively; (2) documentation that a "reasonably thorough search" was made for the best candidate; (3) when two related faculty members are in the same department, and one of these is the chairman, another person or a committee will make administrative decisions concerning the related faculty member (similar procedures apply for persons who work above the departmental level); (4) employees shall be absent from any parts of meetings concerning employment decisions on a relative and shall not vote on these decisions, nor shall that faculty member discuss such decisions with other university personnel; (5) violations of these regulations will be determined by the appropriate administrative officer. Protections against summary dismissal and grievance procedures apply in cases of alleged violations (46a).

4. Conclusion

The history of effective university response to women professionals' complaints and needs should be dated from Revised Order No. 4's publication on December 4, 1971. The Order recognizes the separate problems of employing women and compels universities to give detailed attention to their employment practices dealing with administrative and faculty women. By distinguishing the problems of women and minorities, Revised Order No. 4 also provides greater recognition for the issues women in higher education have raised concerning their terms and conditions of employment.

With increased use of Revised Order No. 4, federal agencies, women's organizations, and college administrators will have enough time to become familiar with the problems of implementing affirmative action. On a national level, the guidelines on affirmative action expected this fall from HEW should give all parties a clearer indication of how colleges should adapt the Revised Order to the problems of the campus. But the guidelines will not provide colleges with a model, detailed, affirmative action plan they can adopt as their own. Each institution must develop a plan suited to its organization and needs, although it can borrow from other plans for modification on its own campus. To accomplish this, college administrators need to be better informed on the actions other institutions are taking. The advice and criticism from campus and national women's organizations also contribute to the development of effective programs.

Affirmative action does not promise to be a cyclical problem which, like campus unrest, will have quiescent as well as active periods. Because of legal requirements and the continuing interest of the women affected, universities will have to develop and continually monitor and revise their affirmative action programs.

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